



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,183	03/23/2006	Josep Duran Von Arx	5751-102 US	7672
26817 7590 11/10/2010 MATHEWS, SHEPHERD, MCKAY, & BRUNEAU, P.A. 29 THANET ROAD, SUITE 201 PRINCETON, NJ 08540				
EXAMINER MCEVOY, THOMAS M				
ART UNIT 3731		PAPER NUMBER		
MAIL DATE 11/10/2010		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/573,183

Applicant(s)

DURAN VON ARX, JOSEP

Examiner

THOMAS MCEVOY

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carlock (US 2,672,138) in view of Miller (US 6,386,197 B1) and Carlock (US 2,569,743).

Regarding claim 2, Carlock '138 discloses a nasal stimulator comprising: a pair of cylinders 12, said pair of said cylinders being joined to one another by a curved tongue 8, each of said cylinders including a widening 1 in the central portion of its external portion, said widening covering the periphery of said cylinder except in a portion of said cylinder which comes into contact with a nasal septum during use (the widening surrounds the cylinders - note hidden line in Figure 2 where Figure 2 is representing the "right-side" [col. 2, line 46] tube and the corresponding front-side visible line in Figure 1 where Figure 1 is representing the "left-side" [col. 2, line 39] tube - except for

portion 3: see col. 3, lines 30-35). Carlock '138 fails to disclose that each of said cylinders is internally perforated; although one may regard the cylinders as having a perforated interior due to the perforated member 13/15. Miller discloses nasal cylinders with internal perforations 68 for holding medicament to be delivered to a user's lungs (col. 4, lines 63-67). It would have been obvious to one of ordinary skill in the art, in view of Miller, to have provided perforations in some portion of the interior of the Carlock '138 cylinders in order to deliver a medicament to a user's lungs. Carlock '138 fails to disclose a peripheral rim as claimed. Carlock '743 teaches that nasal cylinders can be detachable from a support frame by using a threaded peripheral rim 3 extending radially beyond an outer diameter of a lower part of the cylinder. It would have been obvious to one of ordinary skill in the art in view of Carlock '743 to have provided a threaded peripheral rim to the cylinders of Carlock '138 because one of ordinary skill in the art would recognize the benefit of being able to replace worn-out, contaminated or otherwise defective cylinders. With this combination, the stimulator of Carlock '138 would then further comprise a peripheral rim (both the threaded rim 3 or the now detachable frame 4/8/10 of Carlock '138 could now be considered as the peripheral rim) on a lower part of said cylinder capable of serving as a limit where the insertion of the stimulator into the nose should not pass and a protruding support 4 extending from said rim (3 or 8/10) and adapted to add pressure on the external alar of the nose, both the widening and the protruding support capable of producing a gripping effect on the nose alar which stimulates the levator muscle (together they grip the alar and this appears to be the only structural requirement disclosed that causes the claimed stimulation).

Response to Arguments

4. Applicant's arguments with respect to claim 2 have been considered but are either moot in view of the new ground(s) of rejection or not persuasive. Applicant has argued that the widening of Carlock does not extend around both anterior and posterior sides of the cylinders. As better explained above, and with respect to the specific language and hidden lines of Carlock, Examiner respectfully disagrees. The drawings can only be reasonably interpreted as showing the hidden line as something behind the visible portions, not in front. Figure 1 is not representing the right cylinder in Figure 2 flipped around because it is disclosed as the "left-side" tube.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to THOMAS MCEVOY whose telephone number is (571)270-5034. The examiner can normally be reached on M-F, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

7. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Thomas McEvoy/
Examiner, Art Unit 3731

/Anh Tuan T. Nguyen/
Supervisory Patent Examiner, Art Unit 3731
11/08/10